

The Honorable Judge Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

NO. 2:20-cr-00035-RAJ

Plaintiff,

v.

ORDER GRANTING  
DEFENDANT'S MOTION TO  
PROCEED WITH GUILTY PLEA  
VIA VIDEOCONFERENCE

NATHAN BRASFIELD,

Defendant.

This matter comes before the Court on Defendant Nathan Brasfield's motion to proceed with entry of a guilty plea by videoconference. Dkt. 21. The Court has considered the motion, the government's response, and the files and pleadings herein, and for the reasons set forth below hereby **GRANTS** the motion.

**I. PROCEDURAL HISTORY**

The defendant has been charged by Indictment with one count of Felon in Possession of Ammunition. Dkt. 12. He was ordered detained following his initial appearance. Dkt. 9. He was also detained for supervised release violations alleged under CR14-155RAJ. The instant case is set for a status conference on August 7, 2020 at 11:00 a.m. Dkt. 19. The government filed notices of related case under both cause numbers on May 20, 2020. Dkt. 20, 64. The supervised release matter was reassigned to this Court on May 20, 2020. An evidentiary revocation hearing related to the alleged supervised release violations is set before this Court on August 7, 2020, at 11:00 a.m.

1 The parties have reported they have reached a plea agreement. In-person plea  
 2 hearings are not currently possible due to the COVID-19 emergency. Pursuant to General  
 3 Order 08-20, the courthouses in the Western District of Washington will not be open for such  
 4 proceedings until at least August 3, 2020. In light of this delay, the defendant has brought a  
 5 motion seeking to conduct his plea hearing by videoconference. Dkt. 21.

## 6 II. DISCUSSION

7  
 8 Ordinarily, a defendant “must be present” for a change of plea hearing. Fed. R.  
 9 Civ. P. 43(a). Rule 43 provides for limited exceptions, including for some sentencing  
 10 proceedings, but none of the exceptions applies to a plea. Fed. R. Civ. P. 43(c).  
 11 Consequently, under ordinary circumstances, “the district court has no discretion to  
 12 conduct a guilty plea hearing by videoconference, even with the defendant’s permission.”  
 13 *United States v. Bethea*, 888 F.3d 864, 867 (7th Cir. 2018).

14 But these are not ordinary circumstances. Section 15002 of the Coronavirus Aid,  
 15 Relief, and Economic Security Act (“CARES Act”) empowers Chief District Judges to  
 16 authorize hearings by video or telephonic conference when: (1) such hearings “cannot be  
 17 conducted in person without seriously jeopardizing public health and safety;” (2) “the district  
 18 judge in a particular case finds for specific reasons that the plea or sentencing in that case  
 19 cannot be further delayed without serious harm to the interests of justice;” and (3) upon  
 20 “consent of the defendant . . . after consultation with counsel.” CARES Act, Pub. L. 116-136  
 21 §§ 15002(b)(2), (4). The Chief Judge of this Court has made such an authorization. General  
 22 Order 04-20 (W.D. Wash. March 30, 2020). Thus, a plea hearing may be held by  
 23 videoconference, but only upon a finding “for specific reasons that the plea . . . cannot be  
 24 further delayed without serious harm to the interests of justice.” CARES Act  
 25 §15002(b)(2)(a); General Order 04-20 at 3.

26 The defendant argues that if his plea is delayed until the courthouse reopens, he will  
 27 have to wait at least an additional three months before he is sentenced, which will in turn  
 28 delay his transfer to his designated Bureau of Prisons facility, thus depriving him of the

1 opportunity to participate in and benefit from programming (vocation and/or drug treatment)  
2 at his designated facility. These opportunities are absent at the Federal Detention Center at  
3 SeaTac where he is currently housed.

4 In response, the government doesn't appear to oppose the motion, but merely sets  
5 forth its agreement that delaying the defendant's sentencing hearing might limit his ability to  
6 participate in certain programs within the Bureau of Prisons, and its acknowledgement that  
7 this is a basis for the Court to find that delaying entry of his plea would result in "serious  
8 harm to the interests of justice" under the CARES Act.

9 The Court finds that for the reasons set forth by the defendant, a delay of his plea  
10 hearing to a time when it can be conducted in person presents a serious harm to the interests  
11 of justice in this matter.

### 12 13 **III. ORDER**

14 For the reasons set forth above, the defendant's motion does identify circumstances  
15 that can support a finding of "serious harm to the interests of justice" as required by the  
16 CARES Act and General Order 04-20. Therefore, it is hereby **ORDERED** that Defendant  
17 Nathan Brasfield's motion to appear by videoconference for entry of a guilty plea (Dkt. 21)  
18 is **GRANTED**.

19 The parties are directed to schedule a plea hearing to be held via videoconference  
20 before the criminal-duty magistrate judge. The Court directs that the magistrate judge shall,  
21 at the beginning of the plea hearing, personally address the defendant to confirm that the  
22 remote hearing is being held with his consent.

23 DATED this 2nd day of July, 2020.

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26 The Honorable Richard A. Jones  
27 United States District Judge  
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